

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRENDA SANDERS,

Appellant,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

) Case No. RULE-00-0010

)

) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

)

)

)

)

)

)

)

)

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on March 17, 2001.

1.2 **Appearances.** Appellant Brenda Sanders appeared *pro se*. Mickey B. Newberry, Assistant Attorney General, represented Respondent Department of Labor and Industries.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that the department violated WAC 356-30-300 by conducting her annual evaluation more than 60 days after her anniversary date.

1.4 **Citations Discussed.** WAC 356-30-300; Sullivan v. Dep't of Transportation, 71 Wn. App. 317, 858 P.2d 282 (1993).

## II. FINDINGS OF FACT

2.1 Appellant Brenda Sanders was an Industrial Insurance Underwriter 3 and permanent employee for Respondent Department of Labor and Industries. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 14, 2000.

2.2 Appellant alleges a violation of WAC 356-30-300 claiming that her annual performance evaluation for November 1998 to November 1999 was conducted more than 60-days following her anniversary date and that the evaluation contained negative information and misrepresented her performance.

2.3 On February 15, 2000, Appellant's supervisor, Eddie Cheung, e-mailed Appellant to schedule a meeting to discuss her performance evaluation. On March 9, 2000, the evaluation session was held and Appellant was given until March 22, 2000 to provide additional changes or comments to the evaluation which addressed a number of concerns regarding Appellant's attendance and punctuality, her workplace interpersonal skills, and her customer service skills. The performance evaluation covered the period between November 1998 and November 1999. Appellant did not provide any additional input to comments she provided during the March 9 meeting. Appellant's evaluation was finalized and signed by Appellant, Mr. Chueug, and Program Manager Kathryn Kimbel, the reviewer, on March 21, 2000.

2.4 Respondent does not contest that Appellant's performance evaluation was conducted more than 60 days after her anniversary date.

1 2.5 The comments and incidents included in Appellant's annual evaluation occurred during the  
2 evaluation period; the issues were addressed on a regular basis with Appellant during the evaluation  
3 period; and Appellant was given ample opportunity to correct those issues.

4  
5 2.6 The performance evaluation form is a tool for participative evaluation of an employee's  
6 performance. Use of the evaluation form involves a process of communication between the  
7 employee and his or her supervisor. The evaluation process does not require that the employee and  
8 the supervisor reach a mutually agreeable understanding on the final evaluation.

9  
10 2.7 Performance evaluation requirements are found in WAC 356-30-300, which provides in  
11 part:

12  
13 (1) Agencies shall evaluate the performance of their employees during their probationary or  
14 trial service periods and at least once a year thereafter.

15 (2) The annual evaluation will be conducted during the sixty-day period following the  
16 employee's anniversary date, except an agency can establish, on a consistent basis, a due  
17 date which better accommodates the agency's particular needs. The evaluation will cover  
18 the period ending with the establish due date.

19 2.8 WAC 356-30-300 further provides that the evaluation process is designed to inform  
20 employees of their performance strengths and weaknesses; includes provisions for the counseling  
21 and the development of employees; and allows for each employee whose work is judged  
22 unsatisfactory to be notified in writing of those areas in which the work is considered deficient, and  
23 unless the deficiency is extreme, the employee is to be given an opportunity to demonstrate  
24 improvement.

### III. ARGUMENTS OF THE PARTIES

3.1 Appellant asserts that her 1998 to 1999 evaluation was untimely and therefore violated WAC 356-30-300. Appellant asserts that the violation of the rule adversely impacted her because it was extremely disruptive to her work flow and her ability to process her work; created extreme confusion because she understood the normal evaluation schedule and did not know why the evaluation was being given at a different time; and eliminated the opportunity for her to correct issues that had been brought to her attention by her supervisor. Appellant asserts that the untimely evaluation was a change in business practices which eliminated her ability to plan and rely on the agency's normal business practices and timelines. Appellant asserts that she was unable to anticipate developments or rely on any feedback structure. Appellant argues that the untimely evaluation was disruptive to her career and her ability to work, removed any support for her as an employee, and created additional stress for her.

3.2 Respondent admits that the evaluation was conducted beyond the 60 day period. Respondent argues, however, that the evidence establishes that the value and credibility of the evaluation were not affected by the lateness of the evaluation. Respondent argues that there is no reason to remove and destroy an evaluation from an employee's file as long as the purpose of the evaluation has been met and the value and credibility of the evaluation have not been destroyed by the time elapsed between the due date and the date when the evaluation was actually completed. Respondent argues, that in this case, the lateness was unintentional, that Appellant was informed on a regular basis about her performance, and that she was given ample opportunity to modify her performance. Respondent asserts that the purpose of the evaluation was achieved and that the late evaluation did not have any adverse impact on Appellant's ability to perform up to expectations.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

4.3 The issue here is whether Respondent violated the provision of WAC 356-30-300 in conducting and completing Appellant's November 1998 to November 1999 performance evaluation.

4.4 This Board has previously determined that the provision in WAC 356-30-300(2) which provides that evaluations "will" be conducted during the 60 days after an employee's anniversary date is directory, not mandatory. In Sullivan v. Dep't of Transportation, 71 Wn. App. 317, 858 P.2d 282 (1993), the Court affirmed the determination that administrative requirements for completing performance evaluations are directory and that removing an untimely evaluation from an employee's personnel file is inconsistent with the purposes and goals of the evaluation program.

4.5 Respondent was required to perform an evaluation of Appellant's performance in accordance with WAC 356-30-300. In this case, Respondent failed to complete Appellant's evaluation within 60 days of her anniversary date. However, we continue to hold that the timeframe found in WAC 356-3-300 is directory rather than mandatory. The evaluation process does not require that Appellant and Respondent ultimately agree on the evaluation. However, Appellant was provided the opportunity to respond and include additional comments to the evaluation. We conclude that Appellant's performance evaluation satisfied the requirements of WAC 356-30-300.

1 Furthermore, Appellant has failed to prove that she was adversely impacted by the untimely  
2 evaluation.

3  
4 4.6 Appellant has failed to meet her burden of proof that Respondent violated  
5 WAC 356-30-300, and the appeal should be denied.

6  
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brenda Sanders is denied.

9  
10 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

11  
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

13  
14 \_\_\_\_\_  
15 Walter T. Hubbard, Chair

16  
17 \_\_\_\_\_  
18 Gerald L. Morgen, Vice Chair

19  
20 \_\_\_\_\_  
21 Leana D. Lamb, Member